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Governing the Global Corporation: A Critical Perspective

Subhabrata Bobby Banerjee
College of Business
University of Western Sydney
b.banerjee@uws.edu.au

Bobby Banerjee is Professor of Management and Associate Dean (Research) at the College of Business, University of Western Sydney. He obtained his PhD from the University of Massachusetts and has taught there as well as at the University of Wollongong, RMIT University and the University of South Australia. His research interests include corporate social responsibility, sustainability, governance of climate change, socio-cultural aspects of globalization, postcolonialism, and Indigenous ecology. His work has appeared in several scholarly journals including *Journal of Marketing*, *Organization Studies*, *Journal of Management Studies*, *Organization*, *Journal of Business Research*, *Organization & Environment* and *Management Learning*. He is the author of two books: *Corporate Social Responsibility: The Good, The Bad and The Ugly* (Edward Elgar) published in 2007 and a co-edited book *Organizations, Markets and Imperial Formations: Towards an Anthropology of Globalization* (Edward Elgar) published in 2009.

ABSTRACT

In this article I provide a critical perspective on governing the global corporation. While the papers in the 2009 special issue of *Business Ethics Quarterly* explore the political role of corporations I argue that they lack a sophisticated analysis of power across institutional and actor networks. The argument that corporate engagement with deliberative democracy can enhance the legitimacy of corporations does not take into account the effects of institutional, material and discursive forms of power that determine legitimacy criteria. As a result corporate versions of citizenship mediate versions of social responsibility and morality, which are reflected in the institutional and political economic norms that are produced by this power/knowledge. In order to overcome the limits of corporate social responsibility there is a need to develop more democratic forms of global governance of corporations. A radical revisioning of democratic governance would also need to overcome the limits posed by sovereignty and would require new forms of multi-actor and multi-level translocal governance arrangements in an attempt to create forms of power that are more compatible with the principles of economic democracy.

Governing the Global Corporation: A Critical Perspective

In a recent special issue of *Business Ethics Quarterly* several articles explored the changing role of business in a globalized society. Responding to the special issue editors' call 'to discuss the consequences of the social and political mandate of the corporation' (Scherer, Palazzo and Matten, 2009: 329) papers in the special issue covered topics such as transnational

corporations and human rights (Kobrin, 2009); the role of corporations in institutional rule-setting (Pies, Hielscher and Beckmann, 2009); legitimacy of the increasingly powerful private security industry (Elms and Phillips, 2009); stakeholder dynamics in institutional change (Hiss, 2009) and the role of corporations in promoting institutions (Hsieh, 2009). The basic tone and content of the special issue called into question conventional theorizing about corporate social responsibility and argued instead for a political conception of the corporation. The assumption is that in a globalizing world the role of the state has changed, perhaps even weakened, as market actors play an increasing role in societal governance. If corporations are to carry out activities once the purview of governments then there is a need to examine the processes and outcomes of corporate involvement in political and social domains.

The argument is a compelling one especially since the mainstream literature in management and organization studies has either ignored corporate political activity or narrowly circumscribed its extent by focusing on corporate lobbying, corruption, or conflicts with foreign governments. Much of the mainstream management literature does not take into account that in several regions of the world multinational corporations have not only taken over government service delivery roles but basically serve as defacto governments in the region. In several remote regions of Africa and the Asia-Pacific large mining and oil corporations own and operate roads, water supply and utilities, hospitals, schools and even maintain private armed forces that provide 'security' in the region (Banerjee, 2008). The highly publicized case of Royal Dutch Shell and its conflicts with the Ogoni people in the Niger delta provides some insight into the incursion of corporations into societal governance. Oil companies like Shell are the primary sources of government revenue in Nigeria. Shell has contributed to building schools, roads and hospitals in the region. As a Shell manager put it 'Things are back to front here. The government is in the oil business and we are in local government' (cited in Hertz, 2001: 173). But despite millions of dollars in royalty payments communities that have been worst affected by oil extraction continue to live in dire poverty, worsening environmental conditions and have seen their traditional sources of livelihood disappear. Armed conflicts between local communities, government militias and even Shell employees led to the arrest and execution of nine community activists by the Nigerian government and the subsequent withdrawal of the company from the region. Shell recently settled out of court a long running human rights violation case filed by the families of the executed activist. In agreeing to pay \$15.5 million to the families Shell denied any culpability but said it paid the money as a 'humanitarian gesture' (Walker, 2009). The fact remains that whether Shell in the above example was practicing stakeholder theory or being socially responsible or being a corporate citizen, the outcomes for communities most affected by their operations were disastrous. The problem with our theories of corporate social responsibility, corporate citizenship and corporate sustainability is that there is too much 'corporate' in them: as Margolis and Walsh (2003) have pointed out the 'practical necessities' of stakeholder theory have meant that normative justifications beyond that of providing shareholder value have not gained significant ground in theory or practice. While there is more than 40 years of research on what effects CSR initiatives may or may not have on the corporate bottom line we know very little about the outcomes of these initiatives for society.

Power and Legitimacy

The special issue also falls victim to the preoccupation with the supply side of CSR and business ethics. In his thoughtful analysis of the special issue papers Michaelson (2010) points

out that the assumptions of particular ethical codes of conduct underlying Western capitalist discourse has more to do with economic power than any moral authority as such. Thus, regardless of cultural sensitivities the focus is on normalizing patterns of exchange and conduct when 'we' do business with 'them' over 'there' or when 'they' do business with 'us' over 'here'. What is lacking in the papers dealing with the political role of corporations is a nuanced and sophisticated analysis of power. While the special issue editors do acknowledge that political activities of firms can undermine democracy and that it is important to study discursive processes of 'democratic will formation' (Scherer, Palazzo and Matten, 2009: 340) power continues to remain under-theorized in the new conception of the firm as a political actor and as an active proponent of deliberative democracy. Deliberate democracy as Kobrin (2009: 369) points out is an unproven concept and there is no reason why corporate participation in deliberate democracy can give non-corporate and non-state actors 'democratic control' over corporate actions (Banerjee, 2007). The argument for corporations to engage in deliberative democracy is based on theoretical perspectives from neo-institutional theory, in particular the search for economic and societal legitimacy that will enable organizations to procure resources (Meyer and Rowan, 1991). A business firm's legitimacy stems from both its economic function as an efficient producer of goods and its ability to generate wealth for its shareholders. But a firm is also a social actor that has to meet expectations of the wider society and community, which is the rationale why it should engage in deliberate democracy. The problem with the efficiency-legitimacy dichotomy as with all dichotomies is that one category tends to define the other. In economic development policy making for example, it is often the case that legitimacy becomes subordinate to efficiency because notions and terms of legitimacy are discursively produced and defined by economic efficiency criteria. So the 'sticks and carrots' that institutions can provide for socially responsible behavior (Hiss, 2009: 446) tend to favor more carrots than sticks because of corporate power and influence over institutional policy making. Nowhere is this better exemplified than by the enormous power that industry lobby groups wielded during the European Union Emissions Trading Scheme negotiations. Industry lobbyists played a key role in defining the criteria for both carrots and sticks in institutional policies to reduce greenhouse gas emissions and were ultimately successful in shifting the debate from a carbon tax to an emissions trading scheme with generous emitting allowances that enabled the large corporations in the utilities sector to make windfall profits while continuing their business-as-usual approach (Dorsey, 2007).

Thus, the legitimacy arguments for the political conception of the firm fall short in their inability to articulate the effects of institutional, material and discursive forms of power that determine legitimacy criteria. Western capitalist discourse produces a particular kind of discursive corporate rationality that allows certain problems to be articulated and particular solutions to be followed. As a result corporate versions of citizenship mediate versions of social responsibility and morality, which are reflected in the institutional and political economic norms that are produced by this power/knowledge. The corporate and institutional capture of sustainability is a case in point: as environmental concern grew during the late 1980s and early 1990s institutional and corporate discourses of 'sustainable development' gained prominence. Adding to the various debates about meanings and strategies of sustainable development, the World Business Council for Sustainable Development (WBCSD), a powerful lobby group consisting of CEOs of more than 200 multinational corporations provided their 'vision of

sustainable development': 'To maintain entrepreneurial freedom through voluntary initiatives rather than regulatory coercion' (Schmidheiny, 1992: 84).

The United Nations Global Compact (UNGC) is an example of a voluntary initiative without 'regulatory coercion'. The UNGC is promoted as 'learning forum' whereby business firms publicly commit to support human rights and enforce social and environmental standards is often cited as an example of deliberate democracy and the 'bright side' of corporate political behavior (Scherer, Palazzo and Matten, 2009). However, only a small proportion of 4700 signatories of the UNGC are from the Financial Times Global 500 and most U.S. corporations are conspicuous by their absence. If the UNGC is an example of deliberate democracy there is no evidence that it produces positive CSR outcomes: critics point out that there are no monitoring mechanisms, no performance measures, that there are many 'idle members' whose main aim to join the compact was to be able to use the U.N. logo on their company letterhead and that there are several corporations with dubious human rights records who are signatories to the compact (Zammit, 2003). While the Global Compact may serve as a source of legitimacy for corporations whether there are behavioral shifts towards more responsible ways of doing business is another question. Without an enforceability apparatus any accountability mechanism however transparent will remain weak and even strengthen the lack of accountability of corporate actors.

Elms and Phillips (2009) paper on private security forces highlights the skewed nature of economic power in this industry: of the 20 corporations they identify as key players in the industry, 17 are American or European firms. Theaters of operation are exclusively in the former colonies of Africa, the Middle East, Asia and South America. In calling for more transparency and accountability Elms and Phillips (2009) argue for a normative approach to the hiring of private security forces: customers and financiers 'should' be aware of how their resources are being utilized, firms 'must' be careful in assessing client expectations, stakeholders 'should' ensure transparency and accountability. The assumption is that they should do these things in order to generate moral legitimacy. However, what happens when firms do not do what they should? While it is true that a minority of firms have been prosecuted for human rights abuses, most military contractors appear to operate without impunity (Singer, 2004). Elms and Phillips (2009: 422) call for 'stringency of accountability mechanisms' arising from co-created norms between firms and their stakeholders. However, they are silent on the power dynamics that underlie the norm creation process. Powerful stakeholders (such as the U.S. military which is a major client of the private security industry) can ensure that accountability mechanisms are not enforced by citing 'security concerns' or 'national interest'. It is also difficult to see how private security forces can 'respect the dignity of stakeholders' when they are engaged in killing them. For example, Singer (2004) has documented how a private security force can be hired for military combat operations in a particular region to kill the 'enemy' and can subsequently be hired by another bidder at another time in the same region to 'protect' the people they were engaged in killing earlier. Private security forces were part of much of the violence, maiming and killing surrounding the extraction of blood diamonds in Angola involving a diverse range of 'stakeholders'. If moral legitimacy of the private security forces industry is contingent on co-creation of acceptable norms, there is a need to unpack the power structures and discursive rationalities that determine the terms of 'acceptability'. Using private militias to provide security and protect the assets of multinational corporations may be acceptable and the use of violence to

do so may also be justified normatively. But communities from whose land corporations extract resources and wealth find themselves unable to protect their 'assets' or participate as equal stakeholders in the norm creation process because the state which is supposed to protect them is usually on the side of the market (Banerjee, 2008). And of course any use of violence to protect their assets by these communities is 'illegitimate' and an 'unacceptable norm' while the state can use the military to quell 'revolts' and the market can either call on the state military or deploy their own armed security forces to protect their interests.

Institutions and Democratic Governance

In recent years several transnational corporations and their subsidiaries have been prosecuted under the Alien Torts Claim Act, which allows victims of human rights abuses from other countries to sue their perpetrators in U.S. courts. However, given the international nature of these disputes, the problems of legal jurisdiction, the complexities of political and legal structures of transnational corporations, and the absence of a global monitoring and enforcement agency, transnational corporations escape liability in most cases. Transnational corporations can and do exert private authority in the international arena rights. While their rights are protected by various international treaties and intellectually property rights regimes, their corresponding responsibility and liability for human rights abuses is less apparent. In an attempt to overcome this weakness in international law Korbin (2009) proposes a transnational, multi-actor system of private and public authority and governance. While acknowledging that a global governance system is unlikely to emerge given that sovereignty resides with nation states regardless of transnational exchanges, Korbin argues that compliance with norms and soft laws with horizontal governance arrangements may be a more pragmatic solution to monitoring corporate behavior. But the fact remains, as Korbin readily acknowledges that unless soft laws and norms become enforceable on a particular entity their effectiveness will be limited.

As Michaelson (2010) rightly points out the basic premise of the special issue frames the question of global ethics in a 'culturally neutral' way. I would argue that the papers in the special issue are also politically inert in the way they conceptualize power across institutional and actor networks. Two papers in the special issue completely elide the question of power. The first examines the responsibility of global business in promoting just institutions (Hsieh, 2009) and the other paper develops a game theoretic approach to corporate citizenship (Pies et al., 2009). The rationale for multinational enterprises (MNE) to promote 'well ordered social and political institutions' (Hsieh, 2009: 251) in host countries that lack them is far from convincing. Hsieh (2009: 252) argues that the political involvement of MNEs in building institutions in a foreign country should not be seen as interfering with state sovereignty because institution building is motivated by a desire 'not to cause harm' rather than a 'positive' duty like the 'duty of assistance'. The assumption here is that left to its own devices an MNE could cause harm. In a weak institutional environment MNEs should promote just institutions to ensure that their actions do not cause harm. Key issues such as how these institutions are to be governed, what level of authority they have over corporate actions, their legal and jurisdictional status are left unexplained. There are two fundamental problems with the theoretical rationale why MNEs should deploy corporate resources to promote institutions to monitor their own behavior. First, the argument that institution building would enhance an MNE's legitimacy is somewhat dubious. It may enhance their reputation but reputation and legitimacy are not the same thing. The so-called 'license to operate' that is the basis of the legitimacy argument has little theoretical or

empirical support. Large transnational corporations responsible for major environmental disasters and negative social impacts (Union Carbide, Nike, Exxon, Shell, Nestle to name a few) rather than lose their license to operate have actually become stronger and more powerful through mergers, acquisitions, corporate restructuring and relentless public relations campaigns. The high profile media coverage of Nike's use of sweatshop labor and global anti-Nike protests had no effect on the company's profitability – quite the contrary in fact, as the company's profits continued to grow during this period (Zadek, 2004).

Second, it is precisely the policies of several 'well-ordered' institutions like the World Bank, the International Monetary Fund and the World Traded Organization that have failed millions of people in the Third World facing the brunt of 'development'. 'Structural adjustment' policies, intellectual property rights regimes on agricultural products, mega-developmental projects have exacerbated poverty, caused environmental destruction and displaced millions of rural poor populations in the developing regions of the world (Banerjee, 2003; 2007). Institutions are also part of the discursive space of imperial formations in the political economy. Neoliberal policies of supranational institutions and national governments have seen an increasing incursion of market and corporate rationalities into the political realm reconfiguring power relationships between the market, state and civil society (Ong, 2006). The key question is not about the responsibility of MNEs to promote just institutions but about the democratic governance of these institutions and the societal governance of corporate activity.

Pies et al's. (2009: 375) game theoretical approach to corporate citizenship behavior in an attempt to 'realize moral desiderata in a competitive market economy' by contributing to 'better rules of the economic game' demonstrates an unchallenged cultural neutrality of the parameters that construct 'moral desiderata' as well as an astonishing naïveté about the power and politics of rule setting. According to Pies et al. (2009: 377) corporations 'embrace the rights and duties of political actors' and 'actively collaborate' with governments and civil society actors through 'rule-finding and rule-setting' discourses. The authors are silent about the power dynamics underlying this process of 'active collaboration' and 'rule-setting'. Rules of participating in the political economy are almost always dictated by rich Western nations and their market, state and civil society institutions. The role of powerful lobby groups in influencing national and international legislation is well documented: a handful of transnational corporations have been successful in developing rules and legislation on global intellectual property rights as well as national and international emissions trading schemes that serve corporate not societal interests (Banerjee, 2003; Dorsey, 2007). The focus on the supply side of CSR and corporate citizenship once again ignores the outcomes of rules for marginalized populations – the gamed theoretical 'heuristics for doing well by doing good' developed by Pies et al. (2009: 381) do not recognize the limits of doing good: as Bakan (2004: 50) points out, if 'a corporation can do good only to help itself do well, there is a profound limit on just how much good it can do'. The 'win-win semantics' of corporate citizenship effectively delegitimizes and disempowers large segments of society that are unable to participate in the rule setting game. The parameters that define legitimacy are sometimes determined by a system of rules and exclusions that do not address concerns or marginalized groups in society. No amount of 'moral commitment' by corporations and governments seeking to extract resources and revenues can change the 'social structure' of what are inherently incommensurable paradigms. If conceptualizations of corporate citizenship continue to be culturally neutral and politically inert then 'initiating multi-stakeholder dialogue'

and ‘reforming institutional arrangements’ (Pies et al., 2009: 382) will only serve to further corporate interests, often at the expense of societal welfare.

There is no better example of the corporate capture of the political economy than a recent internal memo prepared by investment analysts from the Citigroup corporations titled ‘Revisiting Plutonomy: The Rich Getting Richer’ (Citigroup Equity Strategy, 2006). In their analysis of the global economy during 2002-2006 Citigroup analysts concluded that the rich were the dominant drivers of demand, that the ‘richest 1% have benefited disproportionately from the productivity surge in the U.S.’ and that ‘global capitalists will benefit disproportionately from globalization and the productivity boom at the relative expense of labor’. The analysts provided some degree of comfort to the plutonomy class by declaring that ‘we are very relaxed about these issues’. However, in assessing the risks to plutonomy Citigroup warned that financial crises could pose a threat to plutonomy. And the corporation identified an even bigger threat to the plutonomy: democracy. The report went on to say:

‘While the rich are getting a greater share of the wealth, and the poor a lesser share, political enfranchisement remains as was - one person, one vote in the plutonomies. At some point it is likely that labor will fight back against the profit share of the rich and there will be a political backlash. We don’t see this happening as yet although there are signs of rising political tensions’ (Citigroup Equity Strategy, 2006).

However, Citigroup assured their stakeholders that they ‘are keeping a close eye on developments’. One wonders how ‘ordonomic’ approaches to corporate citizenship, or ‘multi-stakeholder dialogue’ or corporate ‘moral commitments’ can change the institutional landscape in any meaningful way unless it is to further consolidate the interests of the plutonomy.

While I have been fairly critical of contemporary approaches to CSR and corporate citizenship I want to conclude by pointing to alternate directions. A good starting point is to examine precisely the areas that the plutonomists identify as ‘risky’. If ‘political enfranchisement’ is indeed a risk to the ruling class then we need to study the diverse range of resistance movements across the globe that are currently fighting against the injustices of the political economic system. While these are happening in different geographic zones they are not transnational movements – a more accurate descriptor would be to call them translocal movements. Ultimately any reconciliation between economic, environmental and social interests is a political task because it involves structures and processes of power. The main question for a translocal democratic politics is how to create forms of power that are more compatible with the principles of economic democracy. In the contemporary political economy there are millions of people who experience ‘democracy without choices’ where as citizens of sovereign states they can vote to change ruling political parties but have little or no say in influencing economic policies that diminish or destroy their capabilities and rights (Krastev, 2002). Thus, the governance of translocality has less to do with how corporations can penetrate civil society or enter into dialogue with civil society actors but more to do with how marginalized and impoverished communities who are non-corporate, non-state and often non-market actors can ensure their rights are protected in a democracy. If state and market actors have to be held accountable over resource conflicts communities need to establish rights over resources – in the case of Indigenous communities these are not individual property rights but communal rights.

The ultimate challenge of a theory of translocal resistance is to conceive the inconceivable: an extension of the democratic that transcends nation-state sovereignty, perhaps even transcends citizenship (Held and McGrew, 2002). Translocal subaltern resistance needs some form of translocal sovereignty, a concept that is yet to be developed fully both theoretically and politically.

So where do we go from here? A first step is to acknowledge that all our theories of corporate social responsibility, corporate citizenship, stakeholder engagement and the like have come up against the brick walls of sovereignty and democracy. Surmounting these walls requires a radical revisioning of both these concepts with a view to provide more culturally inclusive and politically empowering perspectives. It is also time that organization and management theorists acknowledge the elephant in the room: the problems of accumulation and consumption. Virtually all our theories of the firm are about accumulation and efficiency – these are the twin towers that determine social responsibility and moral commitment in the political economy. Perhaps it is time we abandoned these concepts and turned our attention and resources to the distribution of wealth given that 200 years of capitalism have provided several sophisticated ways of accumulating wealth. A comprehensive assessment of the role of business in society cannot be made by as Hiss (2009) suggests, ‘a holistic perspective on corporations’ attitudes towards socially responsible behavior’. Instead, we need to study the demand side of the CSR equation. Perhaps, instead of a transnational solution (Korbin, 2009) we need to explore multiple translocal solutions. To overcome a collective failure of the imagination we need to visit places of resistance, of protest, of livelihood struggles. Instead of seeking answers about whether CSR improves profitability we need to ask different questions: why are communities in different parts of the world protesting against corporations and governments, why are they willing to give up their lives for their struggle, what are the causes of dispossession and impoverishment of marginalized communities, what is the role of the state and civil society in these struggles? Perhaps exploring these questions can provide a theoretically robust and politically progressive view of the political conception of a firm.

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